1988

Consolidation Coal Company, the Pittsburg and Midway Coal Mining Company v. The Utah Division of State Lands and Forestry, Ralph Miles, Director of the Division of State Lands and Forestry, the Utah Board of State Lands and Forestry, the Utah Department of Natural Resources, Dee Hansen, Executive Director of the Utah Department of Natural Resources : Reply Brief

Keith E. Taylor; Parsons, Behle & Latimer; attorneys for respondents.
David L. Wilkinson; attorney general; David S. Christensen; assistant attorney general; Clark B. Allred, Gayle F. McKeahnie; Nielsen & Senior; attorneys for appellants.

BRIEF

DOCKET NO: 880120

IN THE SUPREME COURT OF THE STATE OF UTAH

CONSOLIDATION COAL COMPANY, THE PITTSBURG & MIDWAY COAL MINING COMPANY, Plaintiffs/Respondents, vs. THE UTAH DIVISION OF STATE LANDS AND FORESTRY, RALPH MILES, DIRECTOR OF THE DIVISION OF STATE LANDS AND FORESTRY, THE UTAH BOARD OF STATE LANDS AND FORESTRY, THE UTAH DEPARTMENT OF NATURAL RESOURCES, DEE HANSEN, EXECUTIVE DIRECTOR OF THE UTAH DEPARTMENT OF NATURAL RESOURCES, Defendants/Appellants.	Case No. 880243 Consolidated with Nos., 880220, 880243, 880215

880120

REPLY BRIEF OF APPELLANTS

Appeal from the Seventh Judicial District
Court of Emery County, State of Utah
The Honorable Boyd Bunnell, Judge.

DAVID L. WILKINSON
UTAH STATE ATTORNEY GENERAL
DAVID S. CHRISTENSEN
ASSISTANT ATTORNEY GENERAL
124 State Capitol
Salt Lake City, Utah 84114

CLARK ALLRED
GAYLE McKEACHNIE
NIELSEN & SENIOR
Special Assistant Attorney General
363 East Main Street
Vernal, Utah 84078
Attorneys for Defendants/Appellants

KEITH E. TAYLOR
PARSONS, BEHLE & LATIMER
185 South State Street
Suite 700
P.O. Box 11898
Salt Lake City, Utah 84147
Attorneys for Plaintiffs/Respondents

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UTAH STATE ATTORNEY GENERAL
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124 State Capitol
Salt Lake City, Utah 84114

KEITH E. TAYLOR
PARSONS, BEHLE & LATIMER
185 South State Street
Suite 700
P.O. Box 11898
Salt Lake City, Utah 84147
Attorneys for Plaintiffs/
Respondents

CLARK B. ALLRED
GAYLE F. McKEACHNIE
NIELSEN & SENIOR
Special Assistant Attorney
General
363 East Main Street
Vernal, Utah 84078
Attorneys for Defendants/
Appellants

TABLE OF CONTENTS

TABLE OF AUTHORITIES

ARGUMENT

POINT I. PLAINTIFFS' ANALYSIS THAT THERE WAS AN AGREEMENT BETWEEN PLAINTIFFS AND THE STATE TO PAY $.175 PER TON IS NOT SUPPORTED BY THE FACTS.

There is an important distinction between this case and the other three cases in this consolidated action. In this case Plaintiffs acknowledged that the escalator clause applied and that it was responsible to pay royalties greater than $.15 per ton. Plaintiffs argue that the trial court was right in concluding that the parties course of conduct established the royalty rate at $.175 per ton or in the alternative estopped the State from demanding a higher rate. The trial court, in its Memorandum Decision, made that decision based on a finding by the court that:

> Mr. Blake informed the Plaintiffs that the rate of royalty would be $.175 per ton which was the same rate as the royalty on the adjacent federal mining lease held by the Plaintiffs.... (R.588)

That finding by the court is not supported by the undisputed facts.

The Affidavit of Mr. Blake (R.420) sets forth what happened. Plaintiff, Consolidation Coal Company, decided to mine on a State Coal Lease. It was aware of the escalator clause in the lease. Plaintiff, therefore, sent a letter to Mr. Blake stating that it was going to pay $.175 per short ton on the State lease which was the same rate paid on a federal lease held by Consolidation Coal Company. The State, pursuant to the terms of the lease and its policy, left it up to the lessee to pay the correct royalties.

Therefore, Mr. Blake did not respond as to whether that was the correct rate, but rather sent the blank reporting forms to the Plaintiffs which required the Plaintiffs, under oath, to report and pay correct royalties. The State then relied upon the Plaintiffs to report and pay the correct royalties. It was not until the audit was conducted that it was determined that the Plaintiffs had not paid the correct royalty.

The decision by the trial court and the arguments of the Plaintiffs that there was an agreement with John Blake are not supported by the undisputed facts. The application of the correct facts, the law governing the administration of trust lands and the public policy in this case requires the upholding of the State's audit.

POINT II. THE TRIAL COURT'S DECISION DID NOT ADDRESS THE QUESTION OF WHETHER THE AUDIT WAS SUBJECT TO THE UTAH ADMINISTRATIVE RULEMAKING ACT.

At page 28, of their Brief, Plaintiffs argue that the district court found that the State's audit was subject to the Utah Administrative Rulemaking Act. A review of the court's Memorandum Decision shows that the trial court did not address that issue.

The Utah Administrative Rulemaking Act, Utah Code Ann. §63-46a-1, et. seq., is not applicable to this case. That State has not promulgated any new policy or new rule as defined in Utah Code Ann. §63-46a-2. The State has not adopted a new policy or rule, but rather is enforcing the terms of an existing coal lease. An audit and then the subsequent enforcement of the terms of the lease are not considered rule making or policy making. Utah Code Ann. §63-46a-2(8).

POINT III. THE SCHOOL TRUST LAND ACCOUNT IS ENTITLED TO RECOVER INTEREST ON THE DELINQUENT ROYALTIES.

The audit and demand for payment also included a demand for payment of interest on the delinquent royalties. To make the trust account whole, the trust account is entitled to receive interest on the monies owed to the trust account from the date of delinquency until paid. Otherwise, the trust account would not receive full value for its money. Plaintiffs argue that the State is only entitled to interest on delinquent royalties from the date demand is made and based that argument on Staker vs. Huntington Cleveland Irrigation Company, 664 P.2d 1188 (Utah 1983). The rule, as stated in Staker vs. Huntington Cleveland Irrigation Company, is not applicable to this case. The rule in Staker applies when a party has made an overpayment and then requests a refund. There is no overpayment in this case, there is an underpayment. When a party is delinquent or underpays an obligation, interest is owed from the date of the delinquency. Bjork vs. April Industries, Inc., 560 P.2d 317 (Utah 1977).

CONCLUSION

The trial court's decision did not find that there was a new policy by the State. The trial court did not include that finding in its ruling because there were no facts to support that argument. The facts and issues in this case should be analyzed under law regarding school trust lands. When that law is applied the audit should be upheld and the case remanded to the trial court with instructions to enter judgment in favor of the State upholding the decision of the Director of State Lands.

Respectfully submitted this 3rd day of December, 1988.

NIELSEN & SENIOR
Attorneys for Appellants

By: _____
Clark B. Allred

By: _____
Gayle F. McKeachnie

MAILING CERTIFICATE

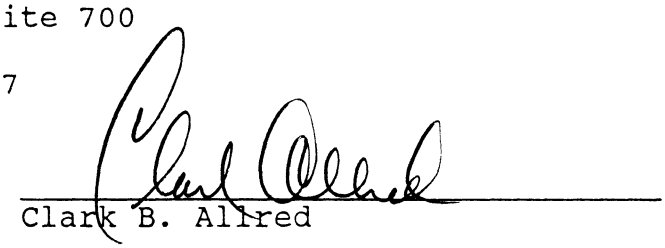
I hereby certify that I mailed four true and correct copies of the foregoing Reply Brief of Appellants on this 5 day of December, 1988 to:

Keith E. Taylor
PARSON, BEHLE & LATIMER
185 South State Street, Suite 700
P.O. Box 11898
Salt Lake City, Utah 84147

Calvin L. Rampton
Richard B. Johns
JONES, WALDO, HOLBROOK & McDONOUGH
1500 First Interstate Plaza
170 South Main Street
Salt Lake City, Utah 84101

Hugh C. Garner
HUGH C. GARNER & ASSOCIATES
136 South Main Street, Suite 700
Salt Lake City, Utah 84101

James M. Elegante
PARSON, BEHLE & LATIMER
185 South State Street, Suite 700
P.O. Box 11898
Salt Lake City, Utah 84147



Clark B. Allred